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Mortgage Act.

NO. XXIII of 1855

Year; 1855

Sub; Law and Legislation / Act / mortgage Act

Place: India

ACT No. XXIII of 1855.[1]

[*13th August, 1855.*]

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.

[As modified up to 1st October, 1908.]

WHEREAS it is expedient that the Law, under which the real and personal assets of deceased Preamble.

[1] Short title, "the Mortgaged Estates Administration Act, 1855". *See* the Indian Short Titles Act, 1897 (14 of 1897). General Acts, Vol. VI.

Based on the Real Estate Charges Act, 1854 (17 & 18 Vict., c. 113). Repealed except as to descents or devises occurring or made before 1st January, 1866, by the Repealing Act, 1868 (8 of 1868).

This Act has been declared, as regards such descents and devises, to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), s. 3, General Acts, Vol. II; but its application has been barred in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900), Eastern Bengal and Assam Code, Vol. I; in the Angul district by the Angul District Regulation, 1894 (1 of 1894) and in the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (3 of 1872), Bengal Code, Vol. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts, namely: —

West Jalpaiguri . . .	*See* Gazette of India,	1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum . .	Ditto,	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzapur District . .	Ditto,	1879, Pt. I, p. 383.
Jaunsar Bawar . . .	Ditto,	1879, Pt. I, p. 383.
The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khan and Dera Ghazi Khan (portions of the districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the districts of Peshawar and Kohat, now form the North-West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857 and *ibid*, 1902, Pt. I, p. 575); but its application has been barred in that part of the Hazára District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation (I of 1900), Punjab and North-West Code	Ditto	1886, Pt. I, p. 48.

[*Price one anna and three pies.*]

persons subject to the English Law are administered, should be amended; It is enacted as follows:—

Heir or devisee of land not to claim payment of mortgage out of personalty.

1.[1] * * * If any person shall die seized of, or entitled to, any estate or interest in any land or other hereditaments within the territories in the possession of, and under the Government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed or other document have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage-debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage-debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage-debts charged on the whole thereof:

Proviso as to right of mortgagee to satisfaction from personal assets.

Provided always, that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage-debt, either out of the personal estate of the person so dying as aforesaid or otherwise:

Proviso as to claims made prior to this Act.

Provided also that nothing herein contained shall affect the rights of any person claiming under, or by virtue of any will, deed, or document already made, or to be made, before this Act shall have come into operation.

The Scheduled Districts in Ganjam and Vizagapatam . *See* Gazette of India, 1898, Pt. I, p. 870.
The Districts of Sylhet . . Ditto, 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills) . . Ditto, 1897, Pt. I, p. 299.

It has been declared, by notification under s. 3 (*b*) of the last mentioned Act, not to be in force in the Scheduled District of Lahaul *See* Gazette of India, 1886, Pt. I, p. 301.

As to devises made on or after 1st January, 1866, *see* the Indian Succession Act, 1865 (10 of 1865), s. 154, General Acts, Vol. I.

[1] The words "after this Act shall have come into operation" were repealed by the Repealing Act, 1874 (16 of 1874).

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